

On 12 July, Royal Decree 609/2023 of 11 July was published in the Official State Gazette (BOE), creating the Central Registry of Real Estate Ownership and approving its regulations (RD 609/2023).

RD 609/2023 addresses the need to implement the third and fourth additional provisions of Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing (Law 10/2010), which provides for the implementation and development of the aforementioned register, as well as its operation and access, respectively.

It is expected to enter into force on 19 September 2023. Nevertheless, an exception has been made for the authorisation contained in the Third Additional Provision, which will enter into force the day after its publication in the BOE, as well as for access to information relating to beneficial ownership, as provided for in Article 5.3, which is scheduled to enter into force on 19 October 2023.

The text finalises the transposition of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Directives 2009/138/EC and 2013/36/EU, as well as incorporating into national law the ruling of the Court of Justice of the European Union in Joined Cases C 37/20 and C 601/20 in relation to Directive (EU) 2018/843 amending Directive (EU) 2015/849.

The aim of the register will be to record and publicise certain beneficial ownership information provided for in Articles 4, 4a and 4b of Law 10/2010, to protect the financial system and other sectors of economic activity by preventing money laundering and terrorist financing.

Thus, the Central Register of Beneficial Ownership (Register) has been set up electronically and centrally so that it can be accessed by the entire national territory. Therefore, it will merge and standardise all the required information already held by other bodies, as well as incorporating already existing historical data, which will need to be carried out by the Ministry of Justice. As for the transfer of data to the Register by the Association of Property and Mercantile Registrars of Spain, the Register of Foundations of State Competence and the General Council of Notaries, first transmission must be made within nine months from the entry into force. During this period, organisations with a legitimate interest may request information about beneficial owners.

Furthermore, with regard to the Register:

- It will be managed by the Ministry of Justice and its headquarters will be in the Directorate General of Security and Public Faith. Thus, the ministry will be responsible for ensuring interconnection with the central European platform so that information in the Register can be obtained in the same way through this channel.
- Failure to identify and inform the register will result in its closure, which will temporarily prevent any changes to companies that are legally obliged to register.
- Processing and storing information, as well as its exchange, must be carried out in accordance with the National Security Scheme and the National Interoperability Scheme.

The regulations of the Register establish the organisation and functioning of the Register, as well as the entities that are likely to have a legitimate interest in accessing information in the Register, and the processing of information and data that must be provided to the Register. Further, an organisation may be refused access to information if obtaining the information would expose a data subject to disproportionate risk. Refusals to grant access may be appealed before a higher hierarchical body, thus putting an end to administrative proceedings.

Finally, regarding the data to be provided, the Regulation stipulates that the information included in the Register shall be kept and updated during the life of the legal persons or entities or structures without legal personality and shall be maintained for a period of 10 years after their extinction.

Likewise, within the Register, relevant information will be available for the first time in Spain on the beneficial owners of trusts, as well as other similar legal instruments operating in the national territory.

It should be noted that the text grants the Ministry of Justice the power and authority to issue as many regulations as necessary for the proper functioning of the Register, including adapting and improving the Register to meet any future needs.

Finally, RD 609/2023 modifies the text of article 9. 6 of the Regulation of Law 10/2010, with the new wording reading as follows: "In order to comply with the obligation to identify and verify the identity of the beneficial owner established in this article, the obliged parties must access the information recorded in this respect in the Central Register of Beneficial Ownership, without prejudice to the fact that for these exclusive purposes they may make additional consultations of the database of beneficial ownership of the General Council of Notaries or other registers that may collect the information on beneficial ownership of the registered legal persons or entities."

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